

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TUFAMERICA, INC.,

Plaintiff,

Civil Action No. 11-cv-1816

v.

SCHEDULING ORDER

THE ORCHARD ENTERPRISES, INC.

Defendant.

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SHIRA A. SCHEINDLIN, U.S.D.J.

WHEREAS, the Court issued an Order for a Conference in accordance with Fed. R. Civ. P. 16(b) (the "Order"); and

WHEREAS, the Order requires that the parties jointly prepare and sign a proposed Scheduling Order containing certain information;

NOW, THEREFORE, the parties hereby submit the following information as required by the Order:

- (1) The date of the conference and the appearances for the parties are as follows:

June 6, 2011, at 2:30 p.m.

Plaintiff's counsel: Kelly D. Talcott, The Law Offices of Kelly D. Talcott

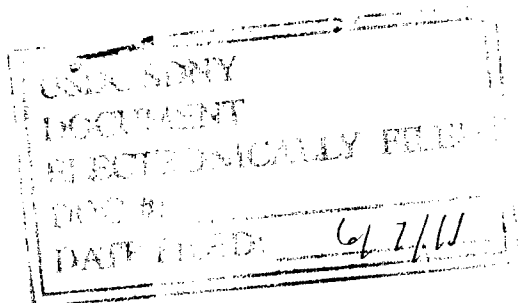
Defendant's counsel: David R. Baum, Lauren B. Perlmutt, SNR Denton US LLP

- (2) The date by which automatic disclosures will be exchanged ~~is~~ 15 days following the Court's ruling on defendant's pending motion to dismiss.

- (3) The issues as they presently appear:

Plaintiff maintains that defendant is infringing a number of musical recordings for which plaintiff owns or controls the copyrights.

Defendant maintains that it is permitted to use the musical recordings pursuant to the parties' license agreement, and that an action for copyright infringement and unjust enrichment cannot lie where the agreement controls.



(4) Schedule

(a) Names of persons to be deposed and a schedule of planned depositions:

Plaintiff to depose:

- a representative of defendant with knowledge of defendant's use of the musical recordings at issue;
- a representative of defendant or defendant's predecessor-in-interest (likely a third party) with knowledge of the agreement under which defendant claims rights to the musical recordings at issue;
- such other person or persons as may be necessary based on discovery or further investigation.

Defendant to depose:

- Aaron Fuchs
- a representative of plaintiff with knowledge of the agreement
- such other person or persons as may be necessary based on discovery or further investigation

The parties will work together to schedule the depositions at mutually-agreeable times following the exchange of discovery documents.

(b) Schedule for the production of documents:

The parties will complete the exchange of documents responsive to their respective discovery requests within ~~30~~ ³⁰ days of the Court's ruling on defendant's pending motion to dismiss.

(c) Dates for expert reports to be supplied and experts to be deposed:

The parties do not presently anticipate relying on expert testimony.

(d) Time when discovery is to be completed:

The parties will complete discovery within 90 days of the Court's ruling on defendant's pending motion to dismiss.

(e) Date by which plaintiff to supply its pre-trial order matters to defendant:

Plaintiff shall supply its pre-trial order materials to defendant within the latter of 120 days of the Court's ruling on defendant's pending motion to dismiss or 30 days following the Court's ruling on the parties' respective motions for summary judgment.

(f) Date by which parties will submit a pre-trial order, trial briefs, and findings of fact and conclusions of law:

140

The parties shall submit a pre-trial order, trial briefs, and findings of fact and conclusions of law within ~~180~~ days of the Court's ruling on defendant's pending motion to dismiss or ~~90~~ days following the Court's ruling on the parties' respective motions for summary judgment. 30

(g) Date for a final pre-trial conference:

(5) Discovery limitations, including protective or confidentiality orders:

The parties anticipate entering into a standard confidentiality order.

(6) Discovery issues on which counsel were unable to reach agreement: None.


(7) Anticipated fields of expert testimony: None.

(8) Anticipated length of trial and whether to a court or jury:


The parties presently anticipate that the trial in this case will consume 4 trial days, and will be tried to the Court.

(9) This Scheduling Order may be altered or amended only on a showing of good cause not foreseeable at the time of the conference or when justice so requires.

(10) Names, addresses, phone numbers, and signatures of counsel:

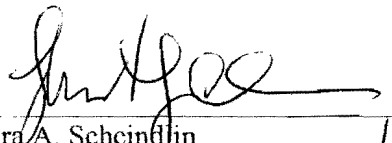

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The Orchard Enterprises, Inc.

SO ORDERED:


Shira A. Scheindlin
U.S.D.J. 6/6/11